IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.338 of 2007

Uthirapathy .. Petitioner

Vs

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Magistrate and
   District Collector
   Villupuram District
   Villupuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus call for the records in C2/5553/2007 dated 9.2.2007 on the file of the Second Respondent and quash the same has illegal and consequently direct the respondents to produce the detenu Bakkiyaraj @ Parasuraman @ Paramasivam aged about 24 years S/o. Uthirapathy, who now confined in Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhikumar
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the father of the detenu, Bakkiaraj @ Parasuraman @ Paramasivam, aged about 24 years, who was incarcerated by order dated 9.2.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the entire records in C2/5553/2007, dated 9.2.2007 on the file of the second

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respondent, to quash the same and to direct the respondents to produce the body and person of the detenu, now confined in the Central Prison, Cuddalore and set him at liberty.

2.1. The order of detention dated 9.2.2007 came to be passed based on the ground case said to have taken place on 23.8.2006 at about 11.15 hours. It is alleged that while one Arulraj alias Arul was returning from Pondicherry to Bommaiarpalayam in his car, the detenu, along with one Manikandan alias Dadha Manikandan, Rajendran, son of Ayyothi, Suresh and Jana alias Janarthanan armed with country made bombs and Veecharuval, waylaid the car by throwing country made bombs at the car, assaulted Arulraj alias Arul brutally with veecharuval over his head, face, neck and both hands and caused instantaneous murder on the spot. The neighbouring residents and the public were disturbed. The normal life came to a stand still. Public peace was disturbed and a feeling of insecurity prevailed in that area, and taking advantage of the confused situation, the detenu and other associates escaped from the scene in a car. The complainant is the son of Subramani, the car driver of the deceased Arulraj alias Arul. A case was registered in Crime No.272/2006 under Sections 286, 324, 307 and 302 of the Indian Penal Code read with Section 5 of the Explosive Substances Act on the file of the Auroville Police Station. The detenu surrendered on 4.9.2006 before the Court of Judicial Magistrate, Thirukoilur.

2.2. The second respondent, taking note of the above case as a ground case and finding that there is an adverse case in Crime No.644 of 2005 on the file of the Kottakuppam Police Station pending against the detenu for various offences punishable under Sections 147, 148, 341, 302 and 149 IPC read with 120(B) of the Indian Penal Code, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

3. Mr.K.Gandhikumar, learned counsel for the petitioner challenges the impugned order of detention dated 9.2.2007 mainly on the ground of delay of about 5 months in passing the order of detention, when the detenu surrendered before the learned Judicial Magistrate, Thirukoilur on 4.9.2006 itself.

4. We have waded through the entire records and it is evident from the same that the detenu was arrayed as an accused in two crimes, viz., the adverse case in Crime No.644 of 2005 for the offences punishable under Sections 147, 148, 341, 302 and 149 IPC read with 120(B) of the Indian Penal Code, and the ground case in Crime No.272/2006 for the offences punishable under Sections 286, 324, 307 and 302 of the Indian Penal Code read with Section 5 of

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the Explosive Substances Act on the file of the Auroville Police Station. Even though the detenu surrendered on 4.9.2006 with respect to the ground case and the charge sheet was filed on 21.11.2006, the proposal for detention was sent by the Sponsoring Authority on 7.2.2007 and the order of detention was passed on 9.2.2007, viz., after about 5 months from the date of surrender of the detenu. Thereafter, the detenu was acquitted in the adverse case on 26.3.2007. Therefore, it is apparent on the face of the record that there is no live link between the last prejudicial activity, the date of surrender of the detenu, the proposed date for detention, and the date of passing of the detention, and in the absence of live link the purpose for which the order of detention is snapped, in our considered opinion, becomes a stale one.

5. It is trite law that when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case. Further, when such delay is unsatisfactory and unexplained, the same would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to prevent him from acting in a prejudicial manner.

In the instant case, the delay of about 5 months in passing the order of detention, even though the detenu surrendered on 4.9.2006 has not been explained satisfactorily. Hence, we are of the considered opinion that the said delay vitiates the impugned order of detention. We, therefore, allow this habeas corpus petition. The order of detention is quashed. The detenu is directed to be released forthwith, unless he is required in connection with any other case.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Magistrate and
   District Collector
   Villupuram District
   Villupuram.

3. The Public Prosecutor
   High Court, Madras.

4. The Superintendent of Central Prison, Cuddalore.

5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9.

H.C.P.No.338 of 2007

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